IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

Criminal Appeal No. 111 of 2000

Date of Decision: 11th April, 2007

State of Himachal Pradesh	Appellant
Versus	
Bal Krishan and another	Accused/Respondents.

Coram

The Hon'ble Mr. Justice **Sanjay Karol,J.**

Whether approved for reporting[1]? Yes.

For the appellant: Mr.C.B.Singh, Dy. Advocate General.

For the respondents: Mr.Neel Kamal Sharma, Advocate.

Sanjay Karol, J.(Oral)

This judgment is being dictated in open Court in the presence of the learned counsel for the parties.

On 12th November, 1996 FIR No. 137/96 was registered with the Police Station Gagret under Sections 435, 448 read with Section 34 of the Indian Penal Code.

Briefly, the case of the prosecution as set out is that on 12th November, 1996 at about 8 p.m. at Village Gagret the accused in furtherance of their common intention entered the house in possession of

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Whether the reporters of Local Papers are allowed to see the Judgment?

the complainant Kaushalya Devi and threw away her articles as also burnt books and clothes. This was done while she was away to Village Kaloha to attend a wedding ceremony and her daughter Renu was alone when accused persons entered her tenanted premises and threw away articles and burnt the books and clothes with a view to take forcible possession of the tenanted premises. The incident is stated to have taken place at 8 p.m. and the matter was reported at about 8.45 p.m. on the same day and the complainant's statement under Section 154, Cr.P.C. was recorded.

After the completion of the investigation the challan was presented in the Court where the accused persons were summoned and put to trial. The prosecution has examined seven witnesses, namely, PW1 Kaushalya Devi, PW-2 Renu, PW-3 S.P.Dogra, PW-4 M.C.Bedi, PW-5 HC Sunil Mohd, PW-6 Kailash Walia and PW-7 Raj Kumar. The defence set out by the accused persons in their statements recorded under Section 313, Cr.P.C. is that they have been falsely implicated in the case for the reason that PW-3 S.P.Dogra was interested to purchase the house of accused Bal Krishan at Amb road and the witnesses being closely related/interested have falsely deposed in order to implicate them.

The trial Court after examining the evidence and material on record came to the conclusion that

the prosecution had not led any cogent and convincing evidence to prove the allegations against the accused and failed to establish the offences under Sections 435, 448 read with Section 34, IPC. Consequently, the accused were acquitted from the aforesaid offences and their bail bonds were also discharged.

The trial Court has observed that the site plan prepared during the course of investigation does not show the true position indicated in the site plan and the statement of PW-6 to the extent that there are many houses adjacent to the house of the complainant and PW-3 S.P.Dogra. It has come on record that PW-1 was not present at the time of alleged incident. Statement of PW-2 Renu, who was the eye witness to the incident, shows the admission that the in addition to a shop there are other houses adjacent to her house. She has been cooking food of PW-3 S.P.Dogra. She has also admitted that PW-4 M.C. Bedi, another eye witness and accused Bal Krishan do not have cordial relations. Interestingly in addition to aforesaid four witnesses, namely, Smt. Kaushalya Devi, Renu, S.P.Dogra and M.C.Bedi, there is no other witness whose statement has been recorded. It has come on record that S.P.Dogra was interested in buying the house of the accused and PW-4 M.C.Bedi has no cordial relations with the accused. It has also come on record that the

complainant's daughter Renu was cooking meals for PW-4 S.P.Dogra. The trial Court has come to the conclusion that the witnesses are either interested or inimical to the accused. The house of the complainant was locked in a densely populated area. The incident is alleged to have taken place when the shops are open and there is movement of public. As to why immediate neighbours did not come forward to intervene and prevent the accused from indulging into the alleged act is unexplainable. Complainant PW-1 is not a witness to the incident. In fact she was away to another place. She has so admitted that S.P.Dogra had telephonically informed the police and had called them. In view of the aforesaid circumstances, the statements of the witnesses cannot be believed.

It is not the case of the prosecution that the accused had forcibly broken open the door and entered the house. From the cross-examination of the witnesses, it is also doubtful as to whether the complainant was actually residing at the place where the alleged incident is stated to have taken place. Perusal of the articles as shown in Ex.P2, which is a photograph taken at the place of alleged incident also indicate that the articles are old, carrying dust and have not been put to use for over a period of time, leading to the inference that they were not

in use at the relevant time. All this falsifies the plea of the prosecution.

In Balbir Singh vs. State of Punjab, reported in AIR 1957 SC 216, it has been held as under:-

> It is now well settled that though the High Court has full power to review the evidence upon which an order of acquittal is founded, it is equally well settled that the presumption of innocence of the accused person is further reinforced by his acquittal by the trial Court and the views of the trial Judge as to the credibility of the witnesses must be given proper weight and consideration; and the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses must also be kept in mind, and there must be substantial and compelling reasons for the appellate Court to come to a conclusion different from that of the trial Judge."

To my mind, the prosecution has failed to lead any cogent evidence to show culpability so as to commit mischief by fire intending to cause damage to the property of the complainant as also to commit trespass.

In view of the aforesaid, I see no reason to interfere with the judgment dated 31st March, 1999 passed by learned Additional Chief Judicial

Magistrate, Amb, District Una, in Case No.122-I-96/25-II-98 in case titled as State of H.P. vs. Bal Krishan and others.

11th April, 2007 (Sanjay Karol),
(C) Judge